

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOSH L. ANDERSON,)
)
Appellant)
)
v.) No. 06-3952
)
LARRY E. KOPKO, RANDY J. ICKERT)
and KATIE L. AVENALI,)
)
Appellees)

MOTION TO REQUIRE APPELLANT TO ORDER TRANSCRIPT

Appellees Larry E. Kopko, Randy J. Ickert and Katie L. Smith, née Katie L. Avenali, respectfully submit the following Motion to Require Appellant to Order Transcript pursuant to F.R.A.P. 10(b)(3)(C).

2. On June 18, 2004 appellant Josh L. Anderson initiated this action by filing a pro se complaint in the United States District Court for the Western District of Pennsylvania against appellees Larry E. Kopko, Randy J. Ickert, and Katie L. Smith, née Katie L. Avenali, which complaint was thereafter timely served on all appellees.

3. On January 6, 2006 the District Court entered an order granting the motions to dismiss of appellees Kopko and Ickert.

4. This action as it related to appellee Smith was tried before a jury from and including August 14, 2006 through August 16, 2006 and, on August 16, 2006, the jury entered its verdict in favor of appellee Smith and, on the same day, the court entered judgment in favor of appellee Smith.

5. No transcript of the trial of this action has been prepared.

6. On August 30, 2006 appellant Josh L. Anderson filed a notice of appeal to the United States Court of Appeals for the Third Circuit.

7. Appellant Anderson did not, pursuant to F.R.A.P. 10(b), within ten days after filing the notice of appeal, (1) order from the reporter a transcript of the trial proceedings, or (2) file and serve a certificate that no transcript would be ordered, or (3) file a statement of the issues he intends to present on appeal.

8. On September 18, 2006 appellees, pursuant to F.R.A.P. 10(b)(3)(B), filed a Designation of Parts of Transcript to Be Ordered designating the entirety of the trial transcript to be ordered by appellant relative to this appeal.

9. Appellant Anderson did not, pursuant to F.R.A.P. 10(b), within ten days after service of the Designation of Parts of Transcript to Be Ordered, (1) order from the reporter a transcript of the trial proceedings, or (2) notify appellees of his intent not to do so.

10. Since appellees cannot determine the issues appellant intends to present on appeal and there is a possibility that those issues will require the review of the entire transcript of the trial proceedings, appellees Larry E. Kopko, Randy J. Ickert and Katie L. Avenali hereby move pursuant to F.R.A.P. 10(b)(3)(C) that appellant be required to order the entirety of the trial transcript relative to this appeal.

WHEREFORE, appellees Larry E. Kopko, Randy J. Ickert and Katie L. Avenali, respectfully request that the Court issue an order to require appellant Josh L. Anderson to order the entirety of the trial transcript relative to this appeal.

Respectfully submitted,

KNOX McLAUGHLIN GORNALL &
SENNETT, P.C.

By: /s/ James T. Marnen

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Attorney for Appellees,
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Appellees)

CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will not send notification of such filing to the plaintiff, Josh L. Anderson, and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participant: plaintiff, Josh L. Anderson, at the following address: Josh L. Anderson, Inmate #FW 6915, SCI Coal Township, 1 Kelley Drive, Coal Township, PA 17866-1021.

By: /s/ James T. Marnen
James T. Marnen